THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.3321 OF 2006

DATED: 28-03-2006

BETWEEN

Sri A. Sudhaker Reddy, Contractor,

S/o. Shri A. Narayana Reddy,

2-2-1075/A/3, Bagh Amberpet,

Hyderabad.

...PETITIONER

AND

Municipal Council, Suryapet,

Nalgonda District,

Rep. by its Commissioner

and others.

...RESPONDENTS

ORDER:

Heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondents.

Learned counsel for the petitioner submits that for construction of two storied commercial complex in the premises of Old Civil Hospital situated at Suryapet, the Government accepted the petitioner's tender the same being the lowest one amongst the eligible tenders

and sanctioned grant under the Integrated Development of Small and Medium Town (IDSMT) Scheme. The Government after considering the proposals sent by the first respondent sanctioned a total sum of Rs.234.00 lakhs and as the preliminary estimated cost of construction for the proposed commercial complex exceeded by Rs.53.31 lakhs the matter was placed before the Municipal Council and the council after considering the pros and cons vide their Municipal Committee Resolution No.608 dated 21.10.2003 resolved to bear the excess amount of Rs.53.31 lakhs from the Municipal General Funds. Thereafter, the matter was referred to the Engineer-in-Chief, Public Health for giving technical sanction and the Engineer-in-Chief accorded technical sanction to the municipal council for construction complex for a total estimated cost of Rs.287.31 lakhs.

Learned counsel further submits that the petitioner submitted his tender for 8.5% excess on the tender amount, which comes to Rs.276.68 lakhs, for which the agreement was entered into and on 04.04.2004 the site was handed over the petitioner to commence the work. He further submits that while the work was under progress the first respondent suggested some deviations in building design, which resulted in extra work and consequently the cost of construction was also increased from Rs.2.76 crores to Rs.366 crores. He further submits that the petitioner completed the work by March 2005 strictly in terms of the instructions given out by the respondents.

In the counter it is stated that for the work done by the petitioner till date the following amounts were paid on the dates mentioned against it.

1. Rs.25,00,000-00 Dt.17-07-2004
2. Rs.51,64,304-00 Dt.13-08-2004
3. Rs.82,61,000-00 Dt.25-10-2004
4. Rs.58,50,000-00 Dt.07-03-2005
5. Rs.14,44,027-00 Dt.15-03-2005
6. Rs.35,00,000-00 Dt.18-06-2005

An amount of Rs.60,78,942/- is to be paid to the petitioner under the balance work done by

him.

Learned counsel for the petitioner placed before this Court proceeding No.E1/IDSMT/CC/2460/2003-04 dated 25.03.2006 of the Commissioner, Suryapet Municipality, stating that the total gross amount of work done is Rs.3,66,04,645/-, the amount paid to Contractor is Rs.2,67,19,331/- and the recoveries made pursuant to Income Tax, Sales Tax, Seigniorage charges and N.A.C is Rs.22,24,958/- and the net amount payable to petitioner is Rs.79,10,356/-.

Learned counsel for the respondents submits that the first respondent resolved to meet the said additional amount from the Municipal General Funds after obtaining approval of the Engineer-in-Chief and the Engineer-in-Chief has given his approval for the revised estimate vide letter No.8558/T7/5/2005 dated 23.09.2005. It is further stated that the additional amount is to be met out from the amounts received from the Government under the Non-Plan Grants.

I am of the opinion that the Municipal Council alone has resolved to meet the additional expenditure from out of its general funds but not out of the grants to be sanctioned by the Government. Therefore, there is no justification on the part of the respondents in not paying the said admitted amounts to the petitioner. Irrespective of any release of grants by the Government the first respondent is liable to pay the said amount to the petitioner.

Learned counsel for the respondents on instructions submits that the respondents undertake to pay the balance amount to the petitioner from out of the general funds, without any reference to grants that may be sanctioned by the Government, by the end of June 2006.

On the other hand, the learned counsel for the petitioner submits that said amount do not bear any interest and therefore,
it may not be just and proper to grant time to the respondents up to June 2006.

Having regard to the facts and circumstances of the case,

the respondents are directed to pay the amounts due and payable to the petitioner in respect of the contract for construction of two storied commercial complex in the premises of Old Civil Hospital area of Suryapet Town under the IDSMT Scheme by the end of May 2006.

If the admitted amounts are not paid to the petitioner by the end of May 2006 the same shall bear interest @ 9% per annum.

The writ petition is accordingly disposed of. No costs.

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V. ESWARAIAH, J

March 28, 2006

DSK